

# In the United States Court of Federal Claims

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BOB J. McADAMS,

Plaintiff,

v.

THE UNITED STATES,

Defendant.

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No. 07-164T

(Filed: February 1, 2008)

**UNPUBLISHED**

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*Bob J. McAdams*, North Little Rock, Arkansas, plaintiff, *pro se*.

*Jennifer P. Wilson*, United States Department of Justice Tax Division, Court of Federal Claims Section, with whom were *Richard T. Morrison*, Acting Assistant Attorney General, United States Department of Justice, Washington, D.C., *David Gustafson*, Chief, Court of Federal Claims Section, and *G. Robson Stewart*, of counsel, for defendant.

## OPINION

MARGOLIS, *Senior Judge*.

This matter comes before the Court on defendant's motion to dismiss, filed November 16, 2007, for lack of subject matter jurisdiction. Plaintiff, Bob J. McAdams, claims the defendant owes him \$104,482.42 plus interest as a tax refund. By order dated November 27, 2007, plaintiff's motion for summary judgment was stayed pending disposition of defendant's motion to dismiss. Defendant, the United States, claims this Court lacks jurisdiction because the plaintiff filed a tax refund claim after the statutory time period to file a claim lapsed. After reviewing the briefs and drawing all reasonable inferences in favor of the plaintiff, this Court does not have jurisdiction over plaintiff's claim. Accordingly, defendant's motion to dismiss is **GRANTED**.

## **I. FACTS**

The Internal Revenue Service (“IRS”) assessed three separate Trust Fund Recovery Penalties (“TFRP”) under 26 U.S.C. § 6672 against the plaintiff for unpaid taxes, as the responsible officer for two different corporations. Section 6672 states that “any person required to collect, truthfully account for, and pay over any tax” will be personally liable if the person “willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof.” 26 U.S.C. § 6672(a). The first TFRP was assessed on January 23, 1990 in the amount of \$93,775.55 for unpaid taxes associated with B.J. McAdams, Inc. for the taxable quarter ending September 30, 1989. On March 26, 1990, the IRS again assessed a TFRP against the plaintiff in the amount of \$172,082.96, for unpaid taxes associated with B.J. McAdams, Inc. for the taxable quarter ending December 31, 1989. The last TFRP was assessed against the plaintiff on July 1, 1991 in the amount of \$395,398.33 for unpaid taxes associated with Drivers Services, Inc. for the taxable quarter ending September 30, 1989.

B.J. McAdams, Inc. filed for Chapter 7 Bankruptcy in the U.S. District Court for the Eastern District of Arkansas on March 28, 1990. The IRS filed claims against B.J. McAdams, Inc. in the bankruptcy proceeding totaling \$1,110,089.34 and are primarily related to employment tax liabilities.

Prior to B.J. McAdams, Inc. filing for bankruptcy, the plaintiff had individual income tax overpayments for the 1988 through 1990 tax years totaling, with interest, \$81,873.80. Plaintiff’s individual income tax overpayments were applied to the TFRP assessments. In 1994, the IRS applied three levy payments (totaling approximately \$29,000) to the accumulated TFRP total. The last levy payment of \$4,547.93 applied to the TFRP assessment was on October 28, 1994. Def. Ex. 1 at US 0267.

On November 19, 1996, the plaintiff filed a Form 843, Claim for Refund, requesting a tax refund in the amount of \$104,843.42, plus interest. Def. Ex. 8 at US 0007. Enclosed with the Form 843 the plaintiff included a document titled “Explanation of Claim.” The attachment explained that the bankruptcy trustee, in the Chapter 7 proceedings of B.J. McAdams, Inc., would pay the entire amount of the TFRP, including interest and penalties.

In response to the plaintiff’s letter and attached explanation, the IRS in February 5, 1997 letter, explained that his refund request was premature. Subsequently, in November 2001, the bankruptcy court determined that the IRS had a secured claim of \$1,104,717.31 and that the IRS had secured collateral in the amount of \$1,173,219.53. The difference, \$68,502.22, was awarded to the IRS as post-petition interest. The bankruptcy court noted that previously the IRS had received \$985,585.65 on the secured claims, but the IRS was still owed \$187,633.88. As a result of these findings, the bankruptcy court ordered the bankruptcy trustee to make a final distribution of \$187,633.88 to the IRS.

On January 22, 2005, the plaintiff again requested a refund from the IRS. On March 17, 2005, the IRS disallowed the plaintiff's refund request. The plaintiff appealed the disallowance of the tax refund, and the appeal was denied on December 8, 2006.

## **II. DISCUSSION**

### **A. Jurisdiction**

When adjudicating a motion to dismiss for lack of subject matter jurisdiction under 12(b)(1) of the Rules of the Court of Federal Claims this Court must “assume all factual allegations to be true and draw all reasonable inferences in plaintiff’s favor.” Hall v. United States, 74 Fed. Cl. 391, 393 (2006) (quoting Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995)).

For this Court to have jurisdiction over a tax refund claim, the taxpayer must have duly filed a refund claim. 26 U.S.C. § 7422. For a claim to be “duly filed” under 26 U.S.C. § 7422, the claim must comply with the statutorily prescribed timing requirement of 26 U.S.C. § 6511(a). Specifically, under 26 U.S.C. § 6511(a) a taxpayer’s

[c]laim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid.

26 U.S.C. § 6511(a).

Furthermore, the U.S. Supreme Court, in United States v. Dalm, 494 U.S. 596, 602 (1990), has emphasized that compliance with the statutorily prescribed timing requirement is a prerequisite for any court to have jurisdiction over a tax refund claim. Specifically, Dalm held that “*unless a claim for refund of a tax has been filed within the time limits imposed by § 6511(a)*, a suit for refund, regardless of whether the tax is alleged to have been erroneously, illegally, or wrongfully collected...may not be maintained in any court.” United States v. Dalm, 494 U.S. at 602 (emphasis added) (internal quotations omitted). Specifically, 26 U.S.C. § 6511(b)(1) states that “[n]o credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.”

### **B. Plaintiff’s Refund Claim**

The defendant asserts that the plaintiff has not complied with the “duly filed” requirement of § 7422 because the two-year statute of limitations requirement of § 6511(a) lapsed before the

plaintiff filed the refund claim. The plaintiff's levy payment on October 28, 1994 was the last payment applied to the TFRP. Therefore, the plaintiff was required to file a refund claim by October 28, 1996 pursuant to § 6511(a). The plaintiff filed two refund claims— November 19, 1996 and January 22, 2005 —both outside the two-year limitation in § 6511. Therefore, pursuant to statutes and Supreme Court precedent, this Court does not have jurisdiction to hear plaintiff's refund claims because the claims were filed after the statute of limitations period lapsed.

### **C. Plaintiff's Additional Claim**

Plaintiff cites 26 U.S.C. §§ 1311, 1312, 1314 as authority for tolling the statute of limitations in the request for refund filed on November 19, 1996. Def. Ex. 8 at US 0007. The cited sections fall under Subchapter Q, "Readjustment of Tax Between Years and Special Limitations." Section 1311 focuses on "Correction of error;" § 1312 relates to "Circumstances of adjustment;" and § 1314 deals with "Amount and method of adjustment." None of the provisions cited by the plaintiff tolls the statute of limitations in § 6511.

Additionally, plaintiff contends that this case is controlled by McCarty v. United States, 437 F.2d 961 (Ct. Cl. 1971). In McCarty, the IRS agreed not to collect taxes owed by a corporation and instead allowed the corporation to continue performance on a contract the corporation had with the U.S. Navy. McCarty, 437 F.2d at 974. Because the IRS made this agreement with the corporation, the IRS was precluded from seeking the payment of the taxes by the corporation's responsible officers. Id. Unlike McCarty, the corporations in this case have made no such agreement with the IRS. Therefore, McCarty, is inapposite to the facts of this case.

### **III. CONCLUSION**

Defendant's motion to dismiss is **GRANTED**. The Clerk will enter judgment for the defendant and dismiss this case. Each party shall pay their own costs.

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LAWRENCE S. MARGOLIS  
Senior Judge, U.S. Court of Federal Claims